



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WW-16J

SEP 09 2014

Colonel Christopher G. Beck
District Engineer
U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, KY 40201-0059

Subject: Public Notice LRL-2013-0444-rjb; High Point Mine, United Minerals Company, LLC, Warrick County, Indiana

Dear Colonel Beck:

The U.S. Environmental Protection Agency has reviewed the above referenced Public Notice issued on August 8, 2014, and the related Clean Water Act (CWA) Section 404 permit application for the proposed surface coal mine in Warrick County, Indiana. Under the preferred alternative, the applicant proposes to impact 59,347 linear feet of jurisdictional streams and 45.72 acres of jurisdictional wetlands for the construction of the 3084.6-acre High Point Mine. The proposed High Point Mine is located between the previously permitted Liberty Mine and pending Seven Hills Mine. The property boundary for all three mines is largely within the Pigeon Creek watershed.

Based on the information contained in the Public Notice, Section 404 permit application materials, and additional project information provided by the U. S. Army Corps of Engineers (Corps), EPA finds that this project may have substantial and unacceptable adverse impacts to Pigeon Creek, its floodplain and its watershed.

Environmental Impact Statement

Section 102(2)(C) of NEPA identifies major federal actions that "significantly" affect the quality of the human environment requiring an environmental impact statement (EIS). "Significantly" under NEPA regulations is defined by two criteria: context, and intensity of impacts of the proposed project.¹ "Context" refers to the affected environment in which a proposed action would occur, and "intensity" means the degree to which the proposed action would minimally include one or more of the factors listed below. As proposed, the High Point Mine appears to exceed thresholds for significance based on the context and intensity of the project. For the following reasons, EPA strongly recommends that the Corps consider an EIS for this project:

¹ 40 C.F.R. § 1507.27

- **Cumulative Impacts:** As stated above, the High Point Mine will be located between the permitted Liberty Mine and the pending Seven Hills Mine. These mining activities would likely lead to impacts that are cumulatively significant. The cumulative impacts from the High Point Mine and other permitted and proposed mines could significantly impact human health and the environment, and would be grounds for the preparation of an EIS.
- **Public Health or Safety:** The proposed mine may raise environmental justice concerns. Nearby communities could be disproportionately impacted by the proposed mine given that the proposed mine would be located between two proposed and operating mines, further exacerbating existing exposures to sensitive populations. Nearby communities may be exposed to multiple mine-related impacts, including fugitive dust, noise, and water discharge. The potential for public health and safety risks will be increased, creating the necessity for an EIS to be prepared.²
- **Threatened and Endangered Species:** The proposed High Point Mine is within the range of the Federally Endangered Indiana bat (*Myotis sodalis*) and proposed endangered northern long-eared bat (*Myotis septentrionalis*). According to a U.S. Fish and Wildlife Service (USFWS) letter dated August 26, 2014, there are multiple records of both species within 2.5 miles of the project area. The proposed area contains abundant summer habitat that supports Indiana bat reproductive colonies. The proposed mining activity would temporarily or permanently eliminate approximately 545 acres of Indiana bat summer habitat.

As stated in previous correspondence and reiterated above, EPA believes the proposed project should be analyzed in conjunction with other similarly proposed projects in the area, including the pending Seven Hills Mine. The operation of these mines relies on shared infrastructure, including the preparation plant. This qualifies the permitting of these mines as connected actions, which should be analyzed in one NEPA document.

If a formal EIS is not required, the applicant will still need to complete a thorough cumulative impacts analysis as required under the CWA Section 404(b)(1) Guidelines (Guidelines).³ This analysis should consider both environmental justice concerns and endangered species.

Cumulative Impacts

In order to fully analyze the past, present, and reasonable foreseeable impacts as required under the National Environmental Policy Act (NEPA) and the Guidelines, the applicant should prepare a cumulative impacts analysis that details the changes in hydrology, drainage patterns, and channel composition in the watershed. Impact assessments for wetlands should include direct and secondary impacts from previous and current actions, as well as impacts from future actions as a result of changes in surface and groundwater hydrology.

A CWA Section 404 permit was issued for the nearby Liberty Mine, LRL-2010-218-gjd, in April 2012. The Liberty Mine permit authorized impacts to 20,343 feet of streams and 99.4 acres of wetlands just to the south and east of the proposed High Point mine; there is currently a request to modify the Liberty Mine permit to impact an additional 5,035 linear feet of streams, 34 acres of wetlands and 30 acres of open water. The preliminary proposal for the Seven Hill's Mine, just west of the proposed High Point

² 40 C.F.R. § 1507.27(b)(2)

³ 40 C.F.R. § 230.11(g)

Mine, would impact approximately 458.2 acres of wetlands and 31,762 linear feet of streams. These three adjacent mines would cumulatively impact over 100,000 linear feet of streams and 600 acres of wetlands. The vast majority of impacts from these three mines will occur within the Pigeon Creek watershed in northwestern Warrick County. While the Liberty Mine has already been permitted, the proposed High Point Mine and Seven Hills Mine should be considered a single permitted project since both are owned by United Minerals Company, appear to be at similar stages of development in the permitting process, and the preparation plant serving both operations would be constructed on the High Point site.

In an August 26, 2014 letter to the U.S. Army Corps of Engineers Newburgh Field Office, USFWS noted the permit area contains high quality natural habitat, including good habitat for many species of migratory birds and other forest wildlife, and contains a diverse mixture of hardwood species. EPA considers Pigeon Creek, its tributaries, and its forested floodplain wetlands to be valuable resources which provide unique, high quality natural habitat, support endangered species, and serve significant biological functions. We agree with USFWS that the area possesses special ecological characteristics of productivity, habitat, and wildlife protection, which are important and easily disrupted ecological values. Except as provided under Section 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Based on the quantity of impacts to quality resources, as well as the extent of cumulative impacts of mining on the Pigeon Creek watershed, EPA believes the project, as proposed, will result in significant degradation of waters of the United States.⁴

Avoidance and Minimization

The Guidelines require that the applicant demonstrates there are no practicable alternatives available that would have a less adverse impact on the aquatic environment for non-water dependent activities. The Guidelines presume that less damaging upland alternatives are available for these activities. In the 404 application, the applicant stated that it examined potential avoidance and minimization opportunities, but no detailed information regarding this effort was provided. EPA requests the applicant provide more detailed information (i.e. maps and narrative) which details and supports its avoidance and minimization efforts under the preferred alternative. Specific information detailing the areas of the project that overlap with other proposed mining projects (i.e. Seven Hills) in relation to the location of avoided areas is needed. The additional information on avoidance and minimization is necessary for the Agencies to determine compliance with the Guidelines.

Mitigation and Monitoring

The applicant has provided a mitigation plan, which includes a monitoring and sampling plan based on physical, chemical, and biological performance standards. EPA believes that the amount of mitigation proposed to compensate for direct impacts is consistent with other approved projects in the area; however it fails to consider and compensate for the secondary, cumulative, and temporal effects of this project on the immediate and greater watershed. With the two abutting mines in the same watershed, it is imperative to take connectivity into account when designing mitigation. As such, the mitigation plan as currently stated does not appear to comply with the 404(b)(1) Guidelines.⁵ The following must be considered in the mitigation plan:

⁴ 40 C.F.R. § 230.10(c)

⁵ 40 C.F.R. 230.94(c)

- The mitigation plan should evaluate the full range of impacts considered under the 404(b)(1) Guidelines, including secondary and temporal impacts.
- Financial assurance is stated as being provided under their SMCRA permit. The applicant needs to address financial assurances in a CWA Section 404 context and provide a long-term management strategy/plan for mitigation areas.
- The proposed monitoring plan included with the draft permit is insufficient. The monitoring program for this project must require biological, chemical, and physical assessments throughout mining operations, including: 1) prior to the initiation of mining activities to establish baseline conditions; 2) during mining operations to assist in determining potential impacts to aquatic habitat and water quality downstream impacts; and 3) for a minimum of five years after the completion of stream restoration and site reclamation activities at the mine site where appropriate to determine mitigation success. Only groundwater monitoring, per SMCRA requirements, is proposed throughout the duration of mining operations.

In summary, EPA believes the High Point Mine, as proposed, may have substantial and unacceptable adverse impacts on Pigeon Creek, its tributaries and its forested floodplain wetlands. EPA objects to the project as proposed because it does not comply with the 404(b)(1) Guidelines. An EIS should be considered for this project, in concert with the pending Seven Hills project.

Please notify us of any response to these comments and any changes to the permit application. We appreciate the opportunity to provide comments on this Public Notice. Please contact Holly Arrigoni (312-886-0995) with any questions regarding this letter.

Sincerely,



Tinka G. Hyde, Director
Water Division

Enclosure

cc: Robert Brown, USACE - Louisville (via email)
David Carr, IDEM
Scott Pruitt, USFWS – Bloomington
Ramona Briggeman, IDNR Division of Reclamation, Jasonville, IN